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10 **DISTRICT OF NEVADA**
11 **UNITED STATES DISTRICT COURT**

12 John and Sheralin Cary,

13 Plaintiffs,

14 vs.

15 Metlife Home Loans c/o UTLS Default
Services, LLC; JOHN DOES I-X; JANE DOES
16 I-X,

17 Defendants.

CASE NO. 3:10-cv-00547-RCJ-RAM

**UTLS DEFAULT SERVICES, LLC'S
JOINDER TO METLIFE'S MOTION
TO DISMISS**

18 Defendant UTLS DEFAULT SERVICES, LLC ("UTLS"), by and through its counsel, Gregg
19 A. Hubley, Esq. and Christina S. Bhirud, Esq., hereby join in Metlife's Motion to Dismiss
20 ("Motion") [Docket Entry 17] in its entirety as if fully set forth herein.

21 UTLS hereby joins in each of the arguments presented by Metlife as to why the Original
22 Petition ("Complaint") and each of its asserted causes of action fails to state a claim upon which
23 relief may be granted. Each of the arguments in the Motion applies with the same force and effect
24 as to UTLS, which is merely the foreclosure trustee of the subject loan.¹ Thus, UTLS specifically
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26 ¹ Plaintiffs' Breach of Fiduciary Duty, Negligence/Negligence Per Se, and Breach of the Implied
27 Covenant of Good Faith and Fair Dealing claims rely upon their contention that UTLS owed them
a fiduciary duty of some kind. That assertion is simply inaccurate. In Gomez v. Countrywide
28 Bank, FSB, the United States District Court for the District of Nevada noted that according to
the United States District Court for the Northern District of California, a foreclosure trustee has a

(continued...)

1 incorporates and adopts those arguments herein, which provide the Court with a proper basis for
2 dismissal of all claims against UTLS as well.

3 For all of the reasons stated in the Motion and its accompanying supporting papers, as well
4 as herein, it is respectfully submitted that Plaintiffs' Complaint should be dismissed, with prejudice,
5 as to UTLS.

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7 Respectfully submitted,

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9 Dated: November 1, 2010

PITE DUNCAN, LLP

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11 By: /s/ Christina S. Bhirud
12 CHRISTINA S. BHIRUD
13 Attorneys for Defendant UTLS DEFAULT
14 SERVICES, LLC
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25 ¹(...continued)

26 duty of care to a trustor, but the scope of the duty is circumscribed by the statutes governing
27 foreclosures. See No. 2:09-cv-01489-RCJ-LRL, 2009 WL 3617650, at * 8 (citing Hendrickson v.
28 Popular Mortgage Servicing, Inc., No. 09-00472-CW, 2009 WL 1455491, at *7 (N.D. Cal. May
21, 2009)). According to the Hendrickson Court, the "scope and nature of the trustee's duties in a
nonjudicial foreclosure 'are exclusively defined by the deed of trust and the governing statutes. No
other common law duties exist.'" No. 09-00472-CW, 2009 WL 1455491, at * 8 (quoting Value
Props., Inc. v. Quality Loan Serv. Corp., 88 Cal. Rptr.3d 381, 384 (Cal. 2009)).

CERTIFICATE OF SERVICE

I, the undersigned, declare: I am, and was at the time of service of the papers herein referred to, over the age of 18 years, and not a party to this action. My business address is 701 East Bridger Avenue, Suite 700, Las Vegas, Nevada 89101.

I hereby certify that on November 1, 2010, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing to the following CM/ECF registrants:

Ariel E. Stern ariel.stern@akerman.com

Jacob D. Bundick, jacob.bundick@akerman.com

Diana S. Erb, diana.erb@akerman.com

I further certify that on November 1, 2010, I served the attached document by U.S. Mail on the following, who are not registered participants of the CM/ECF System:

John Cary
5805 Ingleston Drive
Sparks, Nevada 89436

Sheralin Cary
5805 Ingleston Drive
Sparks, Nevada 89436

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 1st day of November 2010, at Las Vegas, Nevada.


NICOLE L. SCHLANDERER

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